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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,244	04/06/2004	Rainer Herrmann	GMH/416/US	7479
2543	7590	02/22/2006	EXAMINER	
ALIX YALE & RISTAS LLP 750 MAIN STREET SUITE 1400 HARTFORD, CT 06103			NGHIEM, MICHAEL P	
			ART UNIT	PAPER NUMBER
			2863	

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

H.A

**Office Action Summary**

Application No.

10/820,244

Applicant(s)

HERRMANN ET AL.

Examiner

Michael P. Nghiem

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 February 2006 and 20 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12, 14-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 and 19 is/are allowed.
- 6) ☒ Claim(s) 8 and 9 is/are rejected.
- 7) ☒ Claim(s) 1-7, 10-12, 14-16 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br/>         Paper No(s)/Mail Date <u>4-6-04</u>.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)<br/>         Paper No(s)/Mail Date. _____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____.</p> |
|--|---|

## **DETAILED ACTION**

The Amendments filed on January 20, 2006 and February 2, 2006 have been acknowledged.

### ***Withdrawal of Allowability***

The indicated allowability of claim 13 (cancelled now incorporated in claim 8) is withdrawn in view of the newly discovered reference(s) to Herrmann et al. (US 6,837,122). Rejections based on the newly cited reference(s) follow.

### ***Claim Objections***

Claims 1, 4, 15, and 16 are objected to because of the following informalities:

- claim 1, "coefficients" (line 7) should be – variables --.
- claim 4, after "substances" (line 2) replace "which" with – as claimed in claim 1, said active substances --; "as claimed in claim 1" (line 3) should be deleted.
- claim 15, after "substances" (line 2) replace "which" with – as claimed in claim 2, said active substances --; "as claimed in claim 2" (line 3) should be deleted.
- claim 16, after "substances" (line 2) replace "which" with – as claimed in claim 3, said active substances --; "as claimed in claim 3" (line 3) should be deleted.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Herrmann et al. (US 6,837,122).

Regarding claim 8, Herrmann et al. discloses an apparatus (Figs. 1-2) for determining the mass of portioned units of active substances (3, 6, 8) (Abstract, lines 1-2), in particular capsules, tablets or dragees (Fig. 3), which comprises a microwave generator (18), a microwave resonator (15), a device for guiding the units of active substances through the microwave resonator (Fig. 2), measuring and evaluation electronics (Abstract, line 4) for determining the mass from the displacement A of the resonant frequency and the broadening B of the resonance curve (column 2, lines 24-29), and a device for removing individual units of active substances (8 is removed from 15 and into 14, Fig. 2), and a second microwave resonator (second 15) with measuring and evaluation electronics (each resonators has associated measurement electronics,

Abstract, line 4) for determining the mass of the units of active substances (Abstract, lines 5-8) before filling (before filling in 14, Fig. 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herrmann et al. in view of Mayer et al. (US 5,602,485).

Herrmann et al. further discloses that the devices for guiding the units of active substances have a tube (22 in 15, Fig. 3) through which the units of active substances (8) are conveyed (Fig. 3).

However, Herrmann et al. does not disclose that the units of active substances are conveyed by an air stream.

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Nevertheless, Mayer et al. discloses that the units of active substances (14's) are conveyed by an air stream (Fig. 1) for the purpose of processing the capsules at a high rate of speed (column 1, lines 32-35).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Herrmann et al. with a conveying air stream as disclosed by Mayer et al. for the purpose of processing the capsules at a high rate of speed.

***Allowable Subject Matter***

Claims 9-12 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-7 and 14-16 would be allowable if rewritten or amended to overcome the objection(s) set forth in this Office action.

Claims 18 and 19 are allowed.

***Reasons For Allowance***

The **combination** as claimed wherein the mass M is determined, with compensation of the influence of the moisture (claim 1) or the devices for guiding the units of active substances have an endless belt with depressions, into which the units of active substances are inserted (claims 10, 18) the devices for guiding the units of active substances have a circular disk, on the circumference of which the units of active substances are held firmly with the aid of vacuum (claims 11, 19) is not disclosed, suggested, or made obvious by the prior art of record.

***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P Nghiem whose telephone number is (571) 272-2277. The examiner can normally be reached on M-H.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571) 272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Michael Nghiem', with a stylized flourish at the end.

MICHAEL NGHIEM  
PRIMARY EXAMINER

Michael Nghiem

February 18, 2006